

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

PHILLIP DAVISSON, WILLIAM DAVISSON,
OSCAR SCHERRER and WARNER SCHERRER,
d/b/a SCHERRER AND DAVISSON
LOGGING COMPANY, Respondents.

Transcript of Record

On Petition to Enforce an Order of the National
Labor Relations Board

FILED

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PAUL P. O'BRIEN

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, California — 10-26-54

CLERK



No. 14463

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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GENERAL COUNSEL'S EXHIBIT No. 1-C

United States of America
National Labor Relations Board

AMENDED CHARGE AGAINST EMPLOYER

Case No. 19-CA-834. Date Filed 6-25-53. Amended
7-20-53. Compliance Status Checked by 12-31-53 nm.

* * * * *

1. Employer against whom charge is brought:
Scherrer and Davisson Logging Company, Granite
Falls, Washington.

Number of workers employed: 25.

The above-named employer has engaged in and is
engaging in unfair labor practices within the mean-
ing of section 8 (a), subsections (1) and (3) of the
National Labor Relations Act, and these unfair
labor practices are unfair labor practices affecting
commerce within the meaning of the act.

2. Basis of the Charge:

On or about March 1, 1953, Alex Cook applied
for a job with Scherrer and Davisson Logging
Company, Granite Falls, Washington, and was told
he would be employed when the Company started
logging in the Spring. On or about May 6, 1953,
upon inquiry as to why he, Alex Cook, had not been
called, he was told upon questioning by officers of
the Company that he was not hired because of his
past union activities. By this and other acts, the
Company discriminated against Alex Cook all in
violation of Section 8 (a) (1) and (3) of the Act.

3. Full name of labor organization, including

local name and number, or person filing charge: International Woodworkers of America, Local 23-93.

4. Address: Box 218, Sultan, Washington. Telephone No.: Office 2122, Home 3214.

5. Full name of national or international labor organization of which it is an affiliate or constituent unit: International Woodworkers of America, C.I.O.

* * * * *

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By VERN CASTLE,
Business Agent

Date: 7-16-1953.

GENERAL COUNSEL'S EXHIBIT No. 1-F

United States of America
Before the National Labor Relations Board
Nineteenth Region
Case No. 19-CA-834

In the Matter of PHILLIP DAVISSON, WILLIAM DAVISSON, OSCAR SCHERRER and WARNER SCHERRER, doing business as SCHERRER AND DAVISSON LOGGING COMPANY and INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 23-93.

COMPLAINT

It having been charged by International Woodworkers of America, Local 23-93, affiliated with In-

ternational Woodworkers of America, CIO, that Phillip Davisson, William Davisson, Oscar Scherrer and Warner Scherrer, a partnership, doing business as Scherrer and Davisson Logging Company, Granite Falls, Washington, hereinafter called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the Labor-Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director of the Nineteenth Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this complaint and alleges as follows:

I.

Respondent is, and at all times material herein has been, a partnership composed of Phillip Davisson, William Davisson, Oscar Scherrer and Warner Scherrer, each of Granite Falls, Washington, doing business under the name of Scherrer and Davisson Logging Company, and is now, and at all times material herein has been, continuously engaged in the cutting, falling, and skid of timber in the Sultan, Washington, area. Respondent has its principal place of business in Granite Falls, Washington, hereinafter referred to as the Granite Falls Operation.

II.

Respondent, in the course and conduct of its business operations at Granite Falls, Washington,

causes and has continuously caused a substantial amount of cut timber to be sold to Scott Paper Company, a company which operates in interstate commerce. The value of the cut timber sold to Scott Paper Company exceeds \$150,000 annually.

III.

Respondent is, and at all times material herein has been, an employer within the meaning of Section 2, subsection (2) of the Act.

IV.

Respondent is, and at all times material herein has been, engaged in commerce within the meaning of the Act.

V.

International Woodworkers of America, Local 29-93, affiliated with International Woodworkers of America, CIO, hereinafter referred to as the Union, is a labor organization within the meaning of the Act.

VI.

Respondent, while engaged in the operations described above in paragraphs I, II, III and IV, by its officers and agents, on or about May 6, 1953, refused to employ Alex Cook as an employee, and at all times since said date it has refused, and does now refuse, to employ Alex Cook because said Alex Cook engaged in Union activities and concerted activities for the purposes of collective bargaining or other mutual aid or protection.

VII.

Respondent, by all the acts and conduct described in paragraph VI, above, did interfere with, restrain and coerce its employees, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8, subsection (a) (1) of the Act.

VIII.

By the acts described in paragraph VI, above, and for reasons therein set forth, Respondent did discriminate in regard to hire or tenure of employment of Alex Cook, named therein, and thereby has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8, subsection (a) (3) of the Act.

IX.

The activities of Respondent, as set forth in paragraphs VI, VII, and VIII, above, occurring in connection with the operations of Respondent, as described above in paragraphs I, II, III and IV, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

X.

The aforesaid acts of Respondent, as set forth and described in paragraphs VI, VII and VIII, above, constitute unfair labor practices within the

meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 7th day of August, 1953, issues this Complaint against Phillip Davisson, William Davisson, Oscar Scherrer and Warner Scherrer, a partnership, doing business as Scherrer and Davisson Logging Company, the Respondent herein.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
Region 19 407 U.S. Court House Seattle, Wash.

GENERAL COUNSEL'S EXHIBIT No. 1-L

[Title of Board and Cause.]

ANSWER

Comes now the Employer and for answer to the complaint herein admits, denies and alleges as follows:

I.

The Employer admits the allegations in Paragraph I.

II.

The Employer admits the allegations of Paragraph II except the Employer denies that it sold timber to Scott Paper Company, but states that the Employer herein was under contract to log timber belonging to Scott Paper Company. That the title to said timber and logs remained in Scott

Paper Company. The value of services rendered by the Employer herein in 1952 was between \$105,000.00 and \$110,000.00.

III.

Employer admits the allegations in Paragraph III, IV and V of the complaint.

IV.

Employer denies the allegations of Paragraphs VI, VII, VIII, IX and X of the complaint.

Wherefore, having fully answered the complaint herein, the Employer prays that the complaint be dismissed, and that the complainant and general counsel take nothing by reason of their complaint.

/s/ PATTERSON, MAXWELL &
JONES,
Attorneys for Employer.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Howard A. McIntyre, Esq., for the General Counsel.

R. W. Maxwell, Esq., and R. M. Oswald, Esq., Patterson, Maxwell & Jones, of Seattle, Wash., for the Respondent.

Mr. Vern Castle, of Sultan, Wash., for the Union.
Before: Wallace E. Royster, Trial Examiner.

Upon charges filed by International Woodworkers of America, Local 23-93, affiliated with International Woodworkers of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Nineteenth Region, issued his complaint dated August 7, 1953, against Phillip Davisson, William Davisson, Oscar Scherrer and Warner Scherrer, doing business as Scherrer and Davisson Logging Company, herein called Respondents, alleging that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

In respect to unfair labor practices, the complaint alleges that on or about May 6, 1953, the Respondents refused to employ Alex Cook because of Cook's Union and concerted activities.

Respondents' answer denies the commission of unfair labor practices.

Pursuant to notice, a hearing was held before the undersigned in Everett, Washington, on October 8, 1953. All parties were represented, were afforded opportunity to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. A motion by counsel for the Respondents to dismiss the complaint upon which ruling was reserved at the close of the hearing, is disposed of

by the findings, conclusions, and recommendations below.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of the Respondents.

Respondents constitute a partnership with a principal place of business in Granite Falls, Washington. As contract loggers for Scott Paper Company, the Respondents in 1952 cut approximately seven and a half to eight million feet of logs. To the date of hearing in 1953, they had cut approximately three and a half million feet all for Scott Paper Company. All of the timber cut was converted by Scott Paper Company into products moving in interstate commerce. The value of Respondents' services in 1952 to the Scott Paper Company approximated \$105,000. I find that the operations of Respondents affect commerce within the meaning of Section 2 (6) and (7) of the Act.

II. The labor organization involved.

International Woodworkers of America, Local 23-93, is a labor organization affiliated with the International Woodworkers of America, CIO, and admits employees of the Respondents to membership.

III. The unfair labor practices.

For the past several years, Alex Cook has been

employed in the Granite Falls, Washington area as a power saw operator and has worked in that capacity for the WRW Logging Company and more recently for the Wilmac Logging Company. A Mr. Mackie is described in the testimony as one of the owners of Wilmac. Oscar Scherrer, one of the respondents, is the husband of Mrs. Mackie's daughter. Two of Mrs. Mackie's sons operate WRW.

Cook is a member of the Union, vice-president of its Granite Falls district, and, while employed at Wilmac, was the Union's shop steward. In the Spring of 1952, the employees of WRW and Wilmac went on strike. Sometime after the strike ended, another strike, apparently for different objectives took place at the two operations. Cook was a striker on both occasions. The second strike lasted for 10 or 11 weeks and the strikers returned to work only 18 days before the ending of the 1952 logging season. Cook testified that he has since retained his position on Wilmac's seniority roster and that he, presumably, will be recalled to work there when employees of comparable seniority are reached.

In early March of 1953, Cook went to the home of William Davisson and asked Davisson for work when the latter began his logging operations that season. According to Cook, Davisson answered that he would need a number of men but would not provide transportation from Granite Falls to the cutting operation near Sultan, about 50 miles away. Cook replied, he testified, that he would drive his

own car to work and asked Davisson to let him know when a job developed. Davisson testified that he told Cook on this occasion that he would need a number of men, that he would attempt to hire all that he could from the Sultan area, and that all who had not worked for him before would have to supply their own transportation. To Cook's request that he be notified when work was available, Davisson answered "O.K."

Delbert Rawlins, also a member of the Union, in 1952 worked for WRW and was one of the strikers during the Spring and Fall of that year. He too, in March or April in 1953 applied to Davisson for work. In 1951 and for a few days in 1952, Rawlins had worked for the Respondents. On the occasion of his application, Davisson told Rawlins that some men would be needed. Davisson testified that he told Rawlins that the latter would have to sever his connection with WRW where he was in lay-off status and that Rawlins agreed to do so. In early April, according to Rawlins, Davisson came to his home and said that Rawlins could not be hired "because of the Union activity, because of that strike." Davisson explained, Rawlins testified, that Oscar Sherrer and Mr. Mackie insisted that Rawlins not be hired; that Davisson, personally, would like to have him as an employee. Still according to Rawlins, Davisson said he would take up the matter further with his partners, would try to persuade them to permit Rawlins' hire, and that it appeared as if "they" were trying to starve Rawlins and Cook "out."

In late April, Cook applied for and received a State permit to log on his own property and he and Rawlins purchased a donkey engine to be used in the logging. At about the same time as this equipment was acquired Rawlins spoke again to Davisson about a job and was told, he testified, that Scherrer had withdrawn his objection; that Rawlins would be hired. Shortly thereafter Rawlins notified Davisson that he could not take the job as long as Cook remained unemployed for the latter could not handle the logging on which they were engaged alone.

Rawlins and Cook testified, that in early May, on the same occasion when Rawlins was offered employment, Cook renewed his application to Davisson. Davisson answered that he had, as yet, no need for Cook. Cook asked if "the trail at the Wilmac, if they didn't have something to do with it."¹ Davisson answered, according to Cook, "That is the whole damn thing." Davisson denied that any such conversation took place and denied that Cook ever spoke to him about employment subsequent to the March application.

Cook and Rawlins occupied themselves to an extent not shown in the record in logging the former's land. The Respondents assembled a crew, some of them new employees living near Granite Falls, and got on with their cutting. In June, Davisson asked

¹"Trail" may be an erroneous transcription of trouble. My notes taken at the hearing so indicate.

Vernon Castle, the Union's business agent, if he knew of any power saw operators who were seeking employment. Castle, then apparently being unaware of Cook's applications, said that he knew of none.

Fred Roberts, Cook's brother-in-law, testified that in May Davisson told him that he would like to hire Cook but that his partners would not permit it. Shortly thereafter, Davisson hired Roberts. About a week after his employment began, according to Roberts, Oscar Scherrer remarked that he would not hire Cook because Cook was too active in the Union. Scherrer went on to express the fear that Cook would foment a strike among the crew and the belief that Cook was an instigator of other strikes that had occurred.

Davisson denied that any consideration of Union activity came into play regarding Cook's application for employment and denied having any conversation with Rawlins to the effect that the Respondents or any of them were trying to retaliate against Cook in any respect. Davisson explained that he did not want to hire Cook because he did not wish to provide transportation from Granite Falls to Sultan for any more employees and because of an understanding among the Respondents, WRW and Wilmac that none would hire employees of the other. Davisson denied telling Roberts that his partners objected to Cook's hire.

Scherrer, too, denied that he opposed Cook's hire for any reason connected with Union or concerted

activity and firmly denied that he at anytime told Roberts of any reason for Cook's failure to be employed.

Counsel for the Respondents points out the unlikelihood of any Union animus coming into play in Respondents' hiring practices in view of the fact that Scherrer and Davisson both have been members of the Union and deal with it as the representative of their employees. It is also suggested that Roberts' testimony should be rejected first, because of the relationship existing between him and Cook, and second, because of the utter improbability that Scherrer would make such admissions to Cook's relative. Finally, it is urged, Cook did not seek or desire employment after getting the permit to log his land.

I have considered the argument and the factual circumstances to which it is addressed but I find the testimony of the General Counsel's witnesses to be convincing. I am persuaded that Cook's strike activity did engender resentment and a disposition to retaliate in some quarter and that influence was brought to bear upon the Respondents to refuse him employment. It is obvious that Davisson was an unwilling participant in this plan; thus his admission to Cook and Rawlins that Wilmac had something to do with Cook's inability to get on Respondents' payroll and his exculpatory explanation to Roberts that only his partners blocked Cook's hire. I agree that only an indiscreet individual will confess a wrong-doing to a relative of

the victim but I am sure that Scherrer did just that to Roberts and I credit the latter's testimony in that connection. I find that Cook made a bona fide application for employment to Davisson in March and in May; that Cook's residence in Granite Falls constituted no obstacle to his hire as others from that area were hired; that Respondents in May had need for employees with Cook's qualifications and experience; and that Cook was not employed because of his participation in strike activity in the past. I find that Cook did not remove himself from the labor market by logging his own land. His explanation that he engaged in this only when it appeared that he would not get other employment and intended to log for himself only at times when he was not on a payroll is reasonable and is accepted.

By refusing to hire Cook because of his participation in strike activity the Respondents discouraged membership in a labor organization and thus violated Section 8 (a) (3) of the Act.

By refusing employment to Cook because of his participation in strike activity, the Respondents interfered with, restrained, and coerced Cook in the exercise of rights guaranteed in Section 7 of the Act and thereby have violated Section 8 (a) (1) of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents set forth in

Section III occurring in connection with their operations set forth in Section I, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy.

Having found that the Respondents have engaged in unfair labor practices it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

Whether the failure to hire Cook be regarded as discrimination cognizable under Section 8 (a) (3) of the Act, or interference, restraint, and coercion under Section 8 (a) (1), or both, an offer of employment and compensation for lost earnings is the appropriate remedy. It will be recommended therefore, that the Respondents offer immediate employment as a power saw operator to Cook. If Respondents' 1953 operations have ended, Cook's name shall be added to the list for recall in the Spring of 1954 in that position which it would have occupied had he been hired in March, April, or May of 1953 absent discrimination. Cook shall be made whole for any loss of earnings by payment to him of that sum of money he would have earned in employment during 1953 with the Respondents less his net earnings during that period. I do not pass upon the question of Cook's earnings in logging his own land.

The record suggests that Cook planned to do this logging in off seasons or when for economic reasons other employment was not to be had. If, because of the unfair labor practice of the Respondents, he has lost this economic cushion it may be that Respondents are not entitled to set off his earnings therefrom.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. International Woodworkers of America, Local 23-93, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire of Alex Cook the Respondents have engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
3. By such discrimination, the Respondents have interfered with, restrained, and coerced Cook in the exercise of rights guaranteed in Section 7 of the Act and have thereby engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact

and conclusions of law, and upon the entire record in the case, I recommend that Phillip Davisson, William Davisson, Oscar Scherrer and Warner Scherrer, doing business as Scherrer and Davisson Logging Company, their agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Woodworkers of America, Local 23-93 or discouraging concerted activity for mutual aid or protection by discriminating in regard to the hire of any individual.

(b) By such discrimination or in any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 23-93, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer immediate employment as a power saw

operator to Alex Cook or, if 1953 operations have ceased, place him on a list for recall in 1954 in that position. Cook's standing on such list is to be as if he had been hired in 1953 when his services were required.

(b) Make Alex Cook whole for any loss of earnings in the manner set forth in this report in that section entitled "the remedy";

(c) Post at their operation copies of the notice attached here as an appendix. Copies of such notice to be furnished by the Regional Director for the Nineteenth Region, Seattle, Washington, shall after being signed by the Respondents or their duly authorized representative, be posted by the Respondents immediately upon receipt thereof or, if 1953 operations have ceased, within 10 days after the beginning of 1954 operations, and maintained by them for sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondents to insure that such notices are not altered, defaced, or covered by other material.

(d) Notify the said Regional Director in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps are being taken in compliance herewith.

It is further recommended that, unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, the Respondents notify the Regional Director in

writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring them to take such action.

Dated this 20th day of November 1953.

/s/ WALLACE E. ROYSTER,
Trial Examiner.

APPENDIX

Notice to All Employees Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in International Woodworkers of America, Local 23-93, or in any other labor organization, or discourage any individual from engaging in concerted activities for mutual aid or protection by refusing to hire such individual, or by discriminating in any manner in regard to hire, or tenure of employment, or any term of condition of employment.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protec-

tion, or to refrain from any or all such activity except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We Will offer employment to Alex Cook and make him whole for any loss of earnings suffered.

Dated

SCHERRER AND DAVISSON
LOGGING COMPANY
(Employer)

By

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by other material.

United States of America
Before the National Labor Relations Board

Case No. 19-CA-834

In the Matter of PHILLIP DAVISSON, WILLIAM DAVISSON, OSCAR SCHERRER and WARNER SCHERRER, doing business as SCHERRER AND DAVISSON LOGGING COMPANY and INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 23-93.

DECISION AND ORDER

On November 20, 1953, Trial Examiner Wallace E. Royster issued his Intermediate Report in the

above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief,¹ and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the following additions and modifications:

We agree with the Trial Examiner's conclusion that the Respondent discriminatorily refused to hire Alex Cook. However, we note certain factual omissions from the Intermediate Report. These are: (1) Mrs. William Davisson testified without direct

¹ In their brief the Respondents contend, among other things, that there is no evidence in the record to support the Trial Examiner's 8 (a) (3) finding that failure to hire Cook discouraged membership in the Union. It is true that there is no specific evidence in the record to show discouragement. However, in the recent Radio Officers' case, the Supreme Court held that the Board has power to draw such an inference. Like the Trial Examiner, we find that the Respondents' discrimination against Cook warrants an inference, which we make, that the Respondents thereby discouraged membership in the Union. Radio Officers' Union of Commercial Telegraphers Union. A.F.L. vs. N.L.R.B., 74 Sup. Ct. 323, 33 LRRM 2417, 2429-2430.

contradiction that Cook was not in Rawlins' car when, according to the testimony of Cook and Rawlins, Cook made his second application for employment; (2) Vern Castle, the Union business agent, testified that Respondent William Davisson had said to him in June 1953 that Cook was a good man, that he (Davisson) would like to hire Cook, but that there was no room for Cook on the "crummie," and that he (Davisson) did not want to hire any more men from Granite Falls because there wasn't any more room on the "crummie;" and (3) the Respondents hired six employees after May 6, 1953, five of whom lived in the vicinity of Granite Falls: the record is silent as to how two of the employees who lived in Granite Falls were transported to Sultan; three drove from Granite Falls to Sultan; and the sixth employee lived in the Sultan area and the Respondents hauled him from there to the logging operations.

The additional findings we have here noted do not, however, affect our agreement with the Trial Examiner's resolution of the issues, or our agreement with his conclusionary findings.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondents, Phillip Davisson, William Davisson, Oscar Scherrer, and Warner Scherer, doing business as Scherrer and Davisson Log-

ging Company, in Granite Falls, Washington, their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Woodworkers of America, Local 23-93, by refusing to hire any individual, and from discouraging concerted activity for mutual aid or protection by discriminating in regard to the hire of any individual.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Woodworkers of America, Local 23-93, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer immediate employment as a power saw operator to Alex Cook or, if logging operations are currently not in progress, place him on a list for recall in that position during the 1954 logging season. Cook's seniority standing on such list is to be as if he had been hired in 1953 when his services were required.

(b) Make Alex Cook whole for any loss of earn-

ings in the manner set forth in the section of the Intermediate Report entitled "The Remedy".

(c) Post as their logging operations copies of the notice attached hereto as an Appendix.² Copies of such notice, to be furnished by the Regional Director for the Nineteenth Region, Seattle, Washington, shall after being signed by the Respondents or their duly authorized representative, be posted by the Respondents immediately upon receipt thereof or, if operations are currently not in progress, within ten days after the beginning of 1954 operations, and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondents to insure that such notices are not altered, defaced, or covered by other material.

(d) Notify the said Regional Director in writing within ten (10) days from the date of this Order what steps they have taken to comply herewith.

Dated, Washington, D. C., April 22, 1954.

GUY FARMER, Chairman.

ABE MURDOCK, Member.

IVAR H. PETERSON, Member.

PHILIP RAY RODGERS, Member.

[Seal] NATIONAL LABOR RELATIONS
BOARD

² In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted in the notice before the words, "Decision and Order" the words, "Decree of the United States Court of Appeals Enforcing."

APPENDIX

Notice to All Employees: Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in International Woodworkers of America, Local 23-93, or in any other labor organization; and we will not discourage any individual from engaging in concerted activities for mutual aid or protection by refusing to hire such individual, or by discriminating in any manner in regard to hire, or tenure of employment, or any term or condition of employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activity, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We Will offer employment to Alex Cook and

make him whole for any loss of earnings suffered.

Dated

SCHERRER AND DAVISSON
LOGGING COMPANY
(Employer)

By

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by other material.

In the United States Court of Appeals
For the Ninth Circuit

No. 14463

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

PHILLIP DAVISSON, WILLIAM DAVISSON,
OSCAR SCHERRER, and WARNER
SCHERRER, d/b/a SCHERRER AND
DAVISSON LOGGING COMPANY,
Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Rela-

tions Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "Phillip Davisson, William Davisson, Oscar Scherrer and Warner Scherrer, d/b/a Scherrer and Davisson Logging Company and International Woodworkers of America, Local 29-93," the same being known as Case No. 19-CA-834 before said Board, such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Wallace E. Royster, Trial Examiner for the National Labor Relations Board dated October 8, 1953.

(2) Stenographic transcript of testimony taken before Trial Examiner Royster on October 8, 1953, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner Royster's Intermediate Report issued on November 20, 1953 (annexed to item 5 hereof); order transferring case to the National Labor Relations Board dated November 20, 1953, together with affidavit of service and United States Post Office return receipts thereof.

(4) Respondents' Exceptions and Objections to Intermediate Report received by the Board on December 11, 1953.

(5) Copy of Decision and Order issued by the National Labor Relations Board on April 22, 1954,

with copy of Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 1st day of September, 1954.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

Before the National Labor Relations Board
Nineteenth Region
Case No. 19-CA-834

In the Matter of PHILLIP DAVISSON, WILLIAM DAVISSON, OSCAR SCHERRER and WARNER SCHERRER, doing business as SCHERRER AND DAVISSON LOGGING COMPANY and INTERNATIONAL WOOD-WORKERS OF AMERICA, LOCAL 23-93.

TRANSCRIPT OF PROCEEDINGS

Council Chambers, City Hall, Everett, Washington, Thursday, October 8, 1953.

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock, a.m.

Before: Wallace Royster: Trial Examiner.

Appearances: Howard A. McIntyre, 407 U. S. Court House, Seattle, Washington, appearing on behalf of the General Counsel. Vern Castle, Box 218, Sultan, Washington, appearing on behalf of International Woodworkers of America, C.I.O. R. W. Maxwell, 4454 Stuart Building, Seattle, Washington, appearing on behalf of the Respondent. [1*]

Proceedings

Trial Examiner Royster: This is a formal hearing before the National Labor Relations Board in the matter of Phillip Davisson, William Davisson, Oscar Scherrer and Warner Scherrer, doing business as Scherrer and Davisson Logging Company, on a charge filed by the International Woodworkers of America, Local 23-93.

My name is Wallace Royster. I am the trial examiner designated to hear the evidence, to make finding of fact and recommendations to the Board in respect to the issues raised by the pleadings and the evidence. Will counsel please state their appearances for the record.

Mr. McIntyre: For the General Counsel, Howard A. McIntyre, 407 U. S. Court House, Seattle, Washington.

Trial Examiner Royster: For the Union?

Mr. McIntyre: For the Union, Mr. Vern Castle, Box 218, Sultan, Washington.

Mr. Maxwell: For the employer, Patterson, Max-

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

well & Jones, by R. W. Maxwell and R. M. Oswald,
4454 Stuart Building, Seattle, Washington. [3]

* * * * *

Mr. Maxwell: At this time, counsel for the Board called my attention that they had not received an answer. I do not find it in my file. I definitely recall dictating an answer. We requested an extension of time with which to file. I therefore would like to state that, or ask leave to file the written answer as soon as the hearing is over, and at this time state that our answer will be as follows: Admitting paragraph 1, admitting paragraph 2, except that Scherer and Davisson do not sell to stock timber. They are contract loggers for Stock Paper Company. Their cut last year was approximately seven and a half to eight million feet of logs. Their cut so far this year, approximately three and a half million feet, all of which are Stock Paper Company logs, and all of which were converted into products which move in interstate commerce. We will admit paragraph 3. We will admit paragraph 4. [4]

* * * * *

ALEX MANKER COOK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. McIntyre): Would you state your full name for the record please?

A. Alex Manker Cook.

Q. Mr. Cook, what is your address?

(Testimony of Alex Manker Cook.)

A. Star Route, Granite Falls.

Q. Where are you presently employed?

A. At the present time I am working for myself.

Q. What is your normal occupation?

A. My normal operation is power saw operator.

Q. Is that the line of business that you are in at the present time, working the power saw?

A. Yes.

Q. How long have you operated a power saw?

A. Well, right around about eight years.

Q. Have you made a living at operating the power saw for eight years? A. Yes, sir.

Q. Where was the greatest part of this employment? [9]

A. Well, the biggest part was with R. W. Logging Company, Granite Falls, and the Wilmack Logging Company of Granite Falls.

Q. At those places of employ you operated a power saw? A. Yes, sir.

Q. Mr. Cook, did you ever operate a power saw for Scherrer and Davisson Logging Company?

A. No, sir, I never did.

Q. Did you ever attempt to make any application for employment at Scherrer and Davisson Logging Company?

Mr. Maxwell: I object to the form of question calling for a conclusion.

Q. (By Mr. McIntyre): Did you ever seek employment from the company? A. Yes, sir.

Mr. McIntyre: In the questioning of this witness

(Testimony of Alex Manker Cook.)

I would like to just refer to the company as "the company", and it will be the only company so stated.

Mr. Maxwell: Understood.

Trial Examiner Royster: All right.

Q. (By Mr. McIntyre): When did you first attempt to get employment from the company? [10]

* * * * *

A. The first time I applied was in March, along towards the first of March, somewhere around in there.

Q. (By Mr. McIntyre): What year?

A. 1953.

Q. Nineteen fifty what? A. 1953.

Q. 1953? A. Yes.

Q. With whom did you speak for the company?

A. At the time I talked to the bull bucker of the cutting crew, Mr. Red Davisson.

Q. Where was it that you spoke to Mr. Davisson?

A. At that time it was in his house, down to his house. * * * * * [11]

Mr. McIntyre: Before going on with the examination I would like to know if counsel will stipulate a William Davisson is part owner of the Scherrer Logging Company.

Mr. Maxwell: He is one of the partners.

Mr. McIntyre: Can we also stipulate that William Davisson is also known as Red Davisson?

(Testimony of Alex Manker Cook.)

Mr. Maxwell: Yes.

Q. (By Mr. McIntyre): You say you went to Mr. Davisson's house? A. Yes, sir. [12]

Q. At that time did you have any conversation with him?

A. Yes, we talked a little bit just visiting and I asked him for the job.

Q. What job did you ask him for?

A. I asked him for a power saw job.

Q. Where were you staying at the time?

A. I was sitting down at the table.

Q. Did you have any further conversation with Mr. Davisson?

A. We didn't talk very long because they were going somewhere. They were going to a pot-luck supper. And then when he left he followed me out to the car and I told him if he needed a man to let me know and he said he would.

Q. At that time you had made application for a power saw operator?

A. Yes, sir, that is the first time I saw him.

Q. Did he tell you why he was unable to hire you immediately?

A. Not at that time he didn't.

Q. Were you ever contacted by Mr. Davisson after that to be employed? A. No, sir.

Q. Did you ever contact Mr. Davisson after that time? A. Well, I did once after that.

Q. When was the next time you contacted him relative to employment?

(Testimony of Alex Manker Cook.)

A. It was right around the last of April or the first of May [13] somewhere around in there.

Q. Around the last of April or the first of May?

A. Yes, sir.

Q. Where did you contact him?

A. It was at his house.

Q. At his house?

A. It was outside, but it was at his house.

Q. What time of day was that?

A. The best I remember it was around 4:30.

Q. Was there anyone else present?

A. Yes, sir. Mr. Delbert Rawlins.

Q. Where was it outside the house?

A. It was in Mr. Rawlins' car that I talked to him.

Q. Was Mr. Rawlins talking to Mr. Davisson when you arrived at the house? A. Yes.

Q. Were they sitting in Rawlins' car?

A. Yes, they were sitting in the front seat of the car.

Q. Where was Mr. Rawlins sitting?

A. He was on the driver's side.

Q. And Mr. Davisson was sitting on the other side of the front seat? A. Yes, sir.

Q. Did you get in the car?

A. Yes, I got in the back seat. [14]

Q. At that time did you have any conversation with Mr. Davisson?

A. Well, he and Delbert were talking, and when they got through I asked him if he was going to have a job for me, and he started making excuses

(Testimony of Alex Manker Cook.)

that the rigging was still on and he didn't have any need, he said the snow was pretty deep yet up on the hill, and I asked him at that time if it wasn't because of the trouble at the Wilmac, if they didn't have something to do with it. He said, "That is the whole damn thing." That is the words he said.

Q. What is Wilmac? Is that another company?

A. That is the company I worked for the year before. I worked for them three years.

Q. You had worked for them three years?

A. Yes, sir.

Q. In what capacity had you worked for them?

A. Power saw operator.

Q. At the time of this meeting I believe you said it was late in April or early in May of 1953. Relative to that period of time when was the last time you had worked for Wilmac?

A. November I believe was the last.

Q. Of 1952? A. Yes, sir.

Q. During the time that you worked for Wilmac did you have any—were you a member of any Union? [15]

A. Yes, sir, I was a member of the I. W. A.

Q. Did you have any position with the I. W. A.?

A. Well, at that time I was vice president at Granite Falls District and I was also shop steward on the job, and I was on the safety committee there.

Q. Where is the Wilmac operation?

A. Their address is Granite Falls.

Q. How far from Scherrer and Davisson Logging Company?

(Testimony of Alex Manker Cook.)

Mr. Maxwell: Just a moment. Do you mean how far from the Scherrer and Davisson offices or their logging?

Q. (By Mr. McIntyre): How far from the Scherrer and Davisson operation?

A. I believe at the present time Scherrer and Davisson is in Sultan, Washington, Wilmac in Granite Falls area. Their address is Granite Falls.

Q. Does Wilmac have any office in Granite Falls?

A. They have an office, it is a little ways out of Granite Falls. Just a little bit east of Granite Falls on the mountain loop highway.

Q. About how far?

A. I would say about two or three miles out of town, east of town.

Q. Does Scherrer and Davisson have any office that you know of in Granite Falls?

A. I am not sure, but I believe they have an office in [16] Davisson's home at Granite Falls. I am not sure of that, though.

Q. During the time that you were working at Wilmac, did you, I believe you said you were shop steward.

A. Yes, sir, I was shop steward there.

* * * * *

Q. (By Mr. McIntyre): Was there any strike at that time, during the time you worked at Wilmac?

A. Yes, sir, in 1952, I believe in the Spring we had a strike. And then we went back to work, and

(Testimony of Alex Manker Cook.)

the same Fall we went on strike again for another ten weeks.

Q. How long were you out?

A. I think we were out ten or eleven weeks the last time.

Q. That was in the Fall of 1952?

A. Yes, sir.

Q. At that time were you shop steward?

A. Yes, I was. * * * * [17]

Q. Has Mr. Davisson ever contacted you for employment? A. No, sir, he hasn't.

Q. To give you employment? A. No, sir.

Q. Have you ever been asked to go to work for Scherrer and Davisson by any of the company's officials? A. No, sir, I haven't.

Q. How far do you live from Mr. Davisson?

A. I would say a mile and a half maybe. [18]

* * * * *

Cross Examination

Q. (By Mr. Maxwell): Did the local Union have a working agreement with Scherrer and Davisson? A. Not in '52 I don't believe.

Q. Do you know?

A. Well, I am pretty positive they didn't have the contract.

Q. Do you have the records of the Union available? A. I guess we can get it.

Q. Did they have a working agreement in '53?

A. Yes, sir, I think they have.

Q. Your testimony is definitely that they had no working agreement in 1952 with the local Union?

(Testimony of Alex Manker Cook.)

A. I think they were working sub-contractors in 1952, the way I got it.

Q. Your testimony is that they did not have a working agreement with the local Union in 1952?

A. I would say that, yes.

Q. Were they under any working agreement?

A. Yes, sir, they were working under the Soundview Pulp Company.

Q. Do you know the terms and provisions, generally, of that agreement?

A. No, sir, I am not too familiar with it, in their case.

Q. Is it what they call the standard form of agreement? [22]

A. Well, I wouldn't know.

Q. Are you a member of the shop committee?

A. Yes. At the Wilmac I am.

Q. Wilmac has a working agreement, don't they?

A. Yes, sir.

Q. It was a standard agreement?

A. Yes, sir.

Q. As a matter of fact, the Union has a standard agreement with all of the operators in the area, do they not?

A. Not all of them I don't think.

Q. They had one with Scherrer and Davisson, didn't they? A. Not in 1952.

Q. Scherrer and Davisson was working under the Soundview agreement?

A. Sub-contract.

Q. When a crew is laid off in the Fall because

(Testimony of Alex Manker Cook.)

of weather, what is the provision of the agreement with reference to calling them back?

A. As a general rule we always hope that they would go by the seniority.

Mr. Maxwell: I move that that be stricken. It is not what they hope, it's what the provisions are.

The Witness: That is what the contract calls for.

Mr. Maxwell: That is what the contract calls for.

Trial Examiner Royster: Does that satisfy you?

Mr. Maxwell: That is all right.

Q. (By Mr. Maxwell): When you first contacted Mr. Davisson they weren't operating, were they?

A. I wouldn't say for sure if they had started at that present time.

Q. Didn't he tell you that they weren't operating?

A. It seemed like they said that they had to put the rigging on first.

Q. You mean that they were going to put the rigging crew to work first?

A. That is right. The older men.

Q. Didn't he tell you that they had men who had been in their employ when they closed down for the winter of '52 that they were calling back?

A. Yes, and he said he didn't know how many were coming back, but he was pretty sure that he didn't have enough, that he would need some men.

Q. Did he tell you that they were moving their logging shoe to over near Sultan?

A. No, sir. I was over there then.

(Testimony of Alex Manker Cook.)

Q. Didn't he refer to the fact that the new shoe would be approximately 52 miles from Granite Falls? A. No, sir.

Q. Didn't he tell you that if he were to hire any new men he was going to hire them in the Sultan area because they wouldn't [24] have the problem of transportation?

A. He did say something about they wouldn't have a Crummie running from Granite Falls this year.

Q. He did refer to the fact that it was going to be a 52 mile trip over there, did he not?

A. I don't think he said about how far it was, because he knows that I know how far it is, because I worked over there before.

Q. It is around 52 miles?

A. I wouldn't say for sure.

Q. How far is it?

A. I would say that it is close to that, but I couldn't say exactly because I never measured it.

Q. How close?

A. I would say that you are pretty close.

Q. You do admit that if he needed any men he was going to hire them at Sultan?

A. No, he didn't tell me that.

Q. Didn't he say to you that if he were going to hire any men that he was going to hire them from the Sultan area because he didn't want the transportation problem?

A. No, sir, he never told me that.

Q. He didn't tell you that?

(Testimony of Alex Manker Cook.)

A. No, sir. He did tell me he wasn't going to run a Crummie.

Q. He did tell you that he was not going to run a Crummie? [25]

A. Yes. And I told him I could drive to Sultan.

Q. I wish you would fix the date on which you called on Mr. Davisson with reference to this employment.

A. You mean the second time I talked to him?

Q. How many times did you talk to him?

A. I talked to him twice.

Q. The second one is the next time.

A. I would say it's along about the last of April or the first of May, right in there. The last day of April or the first day of May. One of the two.

Q. Isn't it a fact that it was on the fifth day of May that you refer to?

A. No, I don't think it was.

Q. Do you know one of the Union members had died of cancer up there about that time and was buried about that time?

A. Yes, I knew him.

Q. What was his name?

A. Jim Burnathy.

Q. Wasn't it the day of his funeral?

A. Well, I wouldn't know for sure.

Q. As a matter of fact, you and Mr. Rawlins were in separate cars, weren't you?

A. Yes, sir.

Q. And Mr. Rawlins was driving ahead of you?

A. That is right. [26]

(Testimony of Alex Manker Cook.)

Q. Where had you been that day?

A. We had been to Lake Rossinger.

Q. What did you go to Lake Rossinger for?

A. We were going down there to see a guy about a donkey.

Q. As a matter of fact, that is the day the donkey was delivered? A. No, sir.

Q. What did you want a donkey for?

* * * * *

A. Well, I didn't have a job at the time, and we went down there to get the donkey, and I had a little bit of timber around my place and we decided to take that out while we weren't doing anything.

Q. (By Mr. Maxwell): Did you buy the donkey?

A. Yes, sir.

Q. You and Mr. Rawlins?

A. Mr. Delbert Rawlins.

Q. Mr. Rawlins was stopped at Mr. Davisson's house when you pulled up in your car?

A. Yes, sir.

Q. Where was Mr. Rawlins' car?

A. It was in Mr. Davisson's driveway. [27]

Q. Where did you park?

A. I parked on the road.

Q. Isn't it a fact that you never did get out of your car?

A. Yes I got out of the car.

Q. You did get out of your car?

A. Yes, sir.

Q. You did talk to Mr. Davisson?

A. I got out of the car and went down to Mr.

(Testimony of Alex Manker Cook.)

Rawlins' car, and then Red hollered at me and said come on and get on in. So I got in the back seat.

Q. What were they talking about when you got there?

A. I don't know for sure. I think it was more or less about a job.

Q. Just a minute, what did they say when you got in?

A. Well, I was outside the car and I didn't hear what the conversation was. When I got in the car he asked me how I was doing or something like that, and then I asked him, Red, if he would have the job for me then. And that was about all that was said.

Q. Weren't they talking about the donkey?

A. They might have said a little something about the donkey.

Q. Weren't they also talking about the fact that you and Mr. Rawlins were going to go into pulp wood logging? A. No, I don't think so.

Q. You were, weren't you? [28]

A. They might have been talking about it before I got into the car. But I don't know.

Q. As a matter of fact, you and Mr. Rawlins had been making plans to go into Gypco logging for yourselves of pulp wood, isn't that a fact?

A. No, we hadn't.

Q. You hadn't? A. No, sir.

Q. Didn't you make application to the State of Washington for a permit to cut? A. Yes.

Q. When did you make that application?

(Testimony of Alex Manker Cook.)

A. Well, I made that about along in February, I believe.

Q. What was the area that you were asking permission to cut the timber from?

A. It was on the southwest quarter of the northwest quarter of Section 8. Township 30.

Q. Were you granted a permit to cut?

A. Yes, sir, I was.

Q. And you say you made that application when?

A. I believe, I'm not sure of the dates, but I think it was in February sometime.

Q. Isn't it a fact that that application was made in April?

A. Well, I wouldn't swear to that because I don't know just when I did make it. But I know I made it. [29]

Q. The northwest quarter of the southwest quarter of Section 8, Township 30 north, Range 8 east?

A. Yes, sir.

Q. That application was made by you on the 28th day of April, isn't that a fact?

A. I wouldn't say for sure because I don't remember the dates very well.

Mr. Maxwell: The State did not furnish these in duplicate and we did not have the extra forms prepared. And I will ask leave to prepare a duplicate. I will ask the reporter to mark this for identification.

Trial Examiner Royster: That will be Respondent's 1.

(Testimony of Alex Manker Cook.)

(Thereupon the document above referred to was marked Respondent's Exhibit No. 1 for identification.)

Q. (By Mr. Maxwell): Handing you what has been marked for identification as Respondent's Exhibit No. 1, I will ask you to identify this form.

A. That is my own private application.

Mr. Maxwell: I move the answer be stricken.

Trial Examiner Royster: Let it go out. Just address yourself to the question, Mr. Cook. Can you identify the form?

A. I am sure that I filled a form out pertaining to this description, but I wouldn't swear to this form here. It may not be the one, I don't know.

Q. (By Mr. Maxwell): This is a copy. "I hereby certify that [30] the attached is a true and correct copy of the application for timber cutting permit in the files of the State Division of Forestry." Signed L. T. Webster, Supervisor, Division of Forestry.

A. I turned my copy in to the ranger station and he filled it out and sent it in for me.

Q. Referring to the date on this, the 28th day of April, does that refresh your recollection as to the date that it was made out?

A. I went up in February to see what I had to do to cut the timber, see?

Q. Yes.

A. I think I did let it go. It probably was in April.

(Testimony of Alex Manker Cook.)

Mr. Maxwell: I will ask leave to offer this. We offer the exhibit.

Mr. McIntyre: May I ask a question?

Trial Examiner Royster: Yes.

Mr. McIntyre: If the date on that document states that it is April 28, 1953, are you satisfied that that is the day that you filed?

The Witness: Well, it possibly is, yes.

Mr. McIntyre: I will stipulate that that is the day that he filed the application.

Mr. Maxwell: We will offer it anyhow.

Trial Examiner Royster: Without any objections, Respondent's Exhibit 1 is received. [31]

(The document heretofore marked Respondent's Exhibit No. 1 for identification was received in evidence.)

Trial Examiner Royster: In view of the stipulation in respect to that exhibit I will waive the requirement of filing the duplicate.

Mr. Maxwell: Thank you. We have to get duplicates from Olympia.

Q. (By Mr. Maxwell): As a matter of fact, you were issued a permit on that application card.

A. Yes, sir, on that little bit of ground there.

Q. Yes. At the time before you made application, you had inquired about a donkey, hadn't you?

A. We bought this little donkey.

Q. You bought that little donkey after you made application?

A. We had the donkey up there along about May the 9th or something like that.

(Testimony of Alex Manker Cook.)

A. As a matter of fact you had it on May 5th, didn't you?

A. I am not sure of the dates, but it was somewhere in there.

Q. You had been down to see the donkey before you purchased it? A. Yes.

Q. This donkey was advertised for sale, was it?

A. I don't think it was, no.

Q. As a matter of fact you had seen it because you had passed the place where the donkey was located? [32]

A. I go over to my mother-in-law's, and that is the road, and I had seen it there before.

Q. As a matter of fact, before you bought the donkey you and Mr. Rawlins went down there and ran the donkey for a day?

A. I think that you are mistaken there. We ran it for about five days.

Q. About five days before you bought it?

A. Four or five days, yes.

Q. You were satisfied with it and you bought it?

A. Yes, sir.

Q. That was delivered on the 5th day of May, wasn't it?

A. I wouldn't swear to the day, but it is close.

Q. It was the day that you bought the donkey that you and Mr. Rawlins stopped and talked to Mr. Davisson?

A. No, I wouldn't say that it was the day that we bought it. It was the day that it was delivered. No, it wasn't the day it was delivered, no.

(Testimony of Alex Manker Cook.)

Q. As a matter of fact, hadn't you and Mr. Rawlins made plans to go into the Gypco Logging yourselves?

A. Well, I hadn't made any plans to. I couldn't get a job and I had to do something.

Q. You were making plans to go into the Gypco Logging?

A. I figured on taking the timber off of my own place.

Q. At the time that you stopped, you and Mr. Rawlins had decided to purchase this donkey and to go into business, isn't [33] that correct?

A. No, not necessarily. We decided to take the timber out there that I had bought.

Q. As a matter of fact, you had been in business for yourself and Mr. Rawlins, hadn't you?

A. For this summer, yes. We have been working for ourselves.

Q. Have you registered with the State Tax Commission? A. No, sir, I have not.

Q. What are the duties of a shop steward?

A. He carries out the wishes of the crew.

Q. What sort of dispute does he handle?

A. Well, if there is somebody that wants to pay their dues, he takes their dues. And if there is somebody that gets canned unjustly and he figures he is, he comes to the shop steward and tells him. Anything like that.

Q. He handles grievances is all, isn't it?

A. Yes, that is right.

(Testimony of Alex Manker Cook.)

Q. You referred to a strike in the Spring of 1952? A. Yes.

Q. As a matter of fact, that was area-wide throughout northern Washington, was it not?

A. Yes, sir.

Q. All of the Unions were out, all of the I. W. A. Unions?

A. Yes. Oregon and California and Washington.

Q. That pertained principally to health and welfare program [34] and paid holidays?

A. Yes, sir.

Q. At the same time your local Union had opened and asked for Union shop agreement, isn't that correct?

A. Yes, sir. We had that in our negotiations.

Q. That strike was settled, paid holidays granted and the health and welfare program and employer paid and managed was granted, isn't that right?

A. Yes, sir.

Q. And the negotiations closed, isn't that correct? A. Yes. All but local points.

Q. And the second strike that you refer to was the strike over the Union shop, was it not?

A. Well, there was vacation pay involved there, too. And Union shop.

Q. Union shop primarily?

A. And vacations. They were brought in issue.

Q. There were other companies on strike in the area at— A. (Interrupting) No, sir.

Q. Was W. R. W. out? A. Yes.

Q. Wilmac was out?

(Testimony of Alex Manker Cook.)

A. Yes, those two.

Q. That strike lasted about ten weeks, didn't it?

A. Yes, sir, or eleven. [35]

Q. It was settled but no Union shop granted, isn't that correct?

A. We got a Union maintenance.

Q. But not a Union shop?

A. No, sir, we didn't.

Q. During this time, you had any dealings at all with Mr. Davisson? A. No, sir.

Mr. Maxwell: That is all.

Redirect Examination

Q. (By Mr. McIntyre): Did you ever have any conversation with Mr. Davisson where you told him that you no longer desired to be employed because you were going into employment yourself?

A. No, sir. [36]

* * * * *

Q. If you were offered employment by the Scherrer and Davisson Logging Company right now would you take the employment?

Mr. Maxwell: I will object to that as immaterial as to what he would do. It is a self-serving declaration calling for a conclusion.

Trial Examiner Royster: I will overrule the objection. You may answer.

A. Yes, sir, I will take the job.

Mr. McIntyre: No further questions.

(Testimony of Alex Manker Cook.)

Recross Examination

Q. (By Mr. Maxwell): You were granted a permit to cut [37] pursuant to the application that you made?

A. Yes, I was granted a permit to cut that little bit of timber that I had, yes.

Q. That is all?

A. That is all I have. We have a permit on the timber that we have now. That we are taking out now, but it is not in that bunch. It is some relog.

Q. As a matter of fact, you have made application on three or four other locations to log, haven't you?

A. No, sir. The lady made this. She had this timber that had been logged once and we went up and we cleaned it up. And she has an application with our name on it.

Q. You were to be the operator?

A. For us to take it off, yes.

Q. Yes. And then you also made arrangements to log some Forest Service land, didn't you? You did log on Forest Service land?

A. We logged for a little bit for a kid, Mr. Keller, that was on the Forest Service.

Q. You purchased this monkey and paid cash for it, did you not? A. Yes, sir.

Further Redirect Examination

* * * * * [38]

Trial Examiner Royster: When the strike ended

(Testimony of Alex Manker Cook.)
at Wilmac in the Fall of 1952, did you then go back
to your job there?

The Witness: I went back to work there for 18
days and then we were all laid off on account of
snow.

Mr. Maxwell: As a matter of fact, you still hold
seniority rights at Wilmac.

Mr. McIntyre: Objection.

Trial Examiner Royster: I will overrule the
objection. You may answer.

The Witness: As far as I know. I have never
been called back to work.

Mr. Maxwell: But you are subject to call under
the Union agreement?

The Witness: I guess I would be if any number
come up for employment, if they wanted to put
me on.

Mr. Maxwell: All right.

Mr. McIntyre: That is all.

Trial Examiner Royster: You may be excused.

(Witness excused.)

Trial Examiner Royster: The record should
show that the donkey referred to is a gasoline rig
used to bring the logs in.

DELBERT RAY RAWLINS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [39]

Direct Examination

Q. (By Mr. McIntyre): Mr. Rawlins, what is your full name?

A. Delbert Ray Rawlins.

Q. Where do you live, Mr. Rawlins.

A. Star Route, Granite Falls.

Q. What is your occupation?

A. I am a logger.

Q. How long have you been in the logging business? A. About ten years.

Q. At the present time are you in business with Mr. Cook? A. Yes, sir.

Q. Did you ever work for Scherrer Davisson Logging Company? A. Yes, sir.

Q. When did you first go to work for them?

A. In 1950.

Q. In what capacity were you working?

A. Power saw operator.

Q. How long did you work for them?

A. The rest of that season, I started in July. I worked the rest of that season and then '51.

Q. And in '51, was that the last time that you worked for them?

A. No, sir, I worked four days in 1953.

Q. Four days in 1953?

A. Or 1952, excuse me.

Q. Do you recall the month of those four days?

(Testimony of Delbert Ray Rawlins.)

A. I think it was the fore part of September.

Q. Of 1952? A. Yes, sir.

Q. After that time did you make any attempt to get employment from the company?

A. Yes, sir.

Q. With whom did you try to get that employment? A. Mr. Davisson.

Q. Is that Red Davisson? A. Yes, sir.

* * * * [41]

Q. (By Mr. McIntyre): When was it that you first made an attempt to get employment after September '52?

A. I think possibly the second week in March.

Q. At that time were you employed?

A. No.

Q. You talked to Mr. Davisson about employment? A. Yes.

Q. Did he tell you about why he wasn't employing you?

A. They weren't working at the time I asked him first.

Q. That was in March? A. Yes.

Q. You had that conversation—did you have some conversation with him? A. Yes.

Q. What was that conversation?

A. I asked him if he could give me a job this year. And he said, I don't see why not.

Q. Was anything else said?

A. Yes. He told me that he would have to put the rigging crew falling and booking for awhile until he got some timber down to haul, and when

(Testimony of Delbert Ray Rawlins.)

they started the rigging that they would need some more men.

Q. Did Mr. Davisson contact you for employment? A. Yes, he did. [42]

Q. When did he contact you?

A. I am not sure of the exact date, but I think it would have been about the second or third of April.

Q. Where did he contact you?

A. At my place.

Q. At your home? A. Yes, sir.

Q. What time of day was it, do you recall?

A. It was in the evening.

Q. Did you have some conversation with him on that date? A. Yes, sir.

Q. What was that conversation?

A. He told me that he couldn't hire me.

Q. He told you that he could not hire you?

A. Yes.

Q. Did he tell you why he couldn't hire you?

A. It was because of the Union activity, because of that strike.

Q. Is that what he told you?

A. He said that—

Mr. Maxwell: (Interrupting): I am going to move to strike all of this on the ground that it does not pertain to the charge involving Mr. Cook. And is irrelevant to the issue here involved, and outside of the complaint and the charge made.

Trial Examiner Royster: I will deny the motion to strike. [43] I would like to have the witness,

(Testimony of Delbert Ray Rawlins.)
though, just tell what was said on this occasion without anything further.

Q. (By Mr. McIntyre): On that particular occasion you said that you had some conversation with Mr. Davisson. Would you please repeat as well as you remember what that conversation was?

A. It is rather dry. There was quite a bit of it. He had been talking to his partners, principally Oscar Scherrer, and I think Mr. Mackie, and they were the ones that insisted that I not be hired.

Q. Is that what he told you?

A. That is the way I understood it. That he, personally, wanted me.

Q. He said that he, personally, wanted you?

A. Yes, he wanted me.

Q. Was there anything else said that you recall?

A. Yes, he said that it looked to him that they were trying to starve me and Mr. Cook out.

Q. You referred, I believe, in that conversation to a Mr. Mackie. Who is Mr. Mackie?

A. He runs the Wilmac Logging Company. Or is one of the owners of it.

Q. Did you have any other conversation with him at that time?

A. I think that he told me that he would go back and talk to the other members of the partnership and see if he couldn't get [44] them to let him hire me.

Q. Was there anything else said that you recall?

A. He told me that he thought that it would

(Testimony of Delbert Ray Rawlins.)

probably be all right if I could get free from the W. R. W.

Q. If you could what?

A. If I could get free from the W. R. W. Logging Company. I worked for them last year.

Q. The W. R. W. is the logging company?

A. W. R. W. * * * * *

Q. After that date did you have any other conversation relative to employment with Mr. Davisson? A. Yes.

Q. When was the next time?

A. I have gotten my dates all mixed up. I think it was—it was only a few days later. I think it was the first part of April.

Q. Where was that conversation?

A. That was at Mr. Davisson's home.

Q. Was there anyone else present?

A. Yes, sir.

Q. Who was present? A. Mr. Cook.

Q. Was Mr. Cook present for all of the conversation? [45] A. No, he wasn't.

Q. Did you arrive at Mr. Davisson's home before Mr. Cook? A. Yes, sir.

Q. As soon as you arrived did you have some conversation with Mr. Davisson?

A. Yes, sir.

Q. Where did that conversation take place?

A. In my car.

Q. In your car. Were you driving?

A. I was parked in his driveway.

Q. Parked in Mr. Davisson's driveway?

(Testimony of Delbert Ray Rawlins.)

A. Yes.

Q. Did he get in your car?

A. Yes, he did.

Q. Did Mr. Cook join you later? A. Yes.

Q. Did you have any conversation?

A. Yes.

Q. What was that conversation?

A. I asked him if he had seen Oscar, if I could go to work. And he told me that Oscar said it was all right, that I could come to work.

Q. Was that Oscar Scherrer, his partner?

A. That is right.

Q. Was anything else said? [46]

A. I think that was about all until Mr. Cook arrived. It was only a short time.

Q. Was Mr. Cook following right behind you in his car?

A. Just a short distance behind.

Q. Mr. Cook arrived? A. Yes.

Q. Did he get in the car?

A. Yes, he did.

Q. Where did he sit?

A. In the back seat.

Q. Did you hear any conversation between Mr. Davisson and Mr. Cook? A. Yes, sir.

Q. What was the conversation?

A. Mr. Cook asked him if he would have a job for him, this year.

Q. What did Mr. Davisson say?

A. He said he didn't know. He said that they still had the rigging crew falling and bucking and

(Testimony of Delbert Ray Rawlins.)

he didn't know how many men were coming back, so he wasn't sure. And Mr. Cook said, I think, that it looks to me that Mackie has got something to do with it, and as near as I remember the words, Mr. Davisson said, "I know damn well he has."

* * * * [47]

Q. Any time during that conversation did you advise Mr. Davisson that you had purchased a donkey?

A. We might have mentioned that we were looking at one. I think we did possibly.

Q. Did you tell him the reason for it?

A. We were figuring taking out some timber.

Q. Did you tell Mr. Davisson the reason?

A. I think so.

Q. Did you go to work for Scherrer and Davisson at that time? A. No.

Q. Did you tell them why. A. Yes.

Q. When did you tell them that you would not go to work for them?

A. It was a few days later.

Q. Who did you tell? A. Mr. Davisson.

Q. What did you tell him?

A. I told him that I wouldn't be able to work for him until such time as Mr. Cook got a job because I couldn't leave him alone.

Mr. McIntyre: No further questions.

Cross-Examination

Q. (By Mr. Maxwell): Did you know Mr. Bernathy? The man who died? [48] A. Yes.

(Testimony of Delbert Ray Rawlins.)

Q. What date was it that you and Mr. Cook stopped to see Mr. Davisson?

A. I don't remember the exact date.

Q. Was it in May?

A. I think it was the very last part of April.

Q. You and Mr. Cook had been down looking at this donkey, hadn't you?

A. Yes, we had.

Q. You had decided to purchase it on that date?

A. Yes.

Q. That is the date the donkey was delivered, is it not? A. No.

Q. You purchased the donkey from a Mr. Huscwick? A. Yes, sir.

Q. And he delivered it to you, didn't he?

A. Yes, he did.

Q. And you had been down that day to look this donkey over and you purchased it, and on the way back you happened to see Mr. Davisson working on the Crummie truck, isn't that correct?

A. That is right.

Q. When you saw him you pulled into his driveway and stopped? A. Yes.

Q. You told him that you regretted not being able to go to Mr. Bernathy's funeral, but you couldn't because you had been down [49] there to buy this donkey.

A. I don't remember telling him that.

Q. You didn't go to that funeral, did you?

A. No.

(Testimony of Delbert Ray Rawlins.)

Q. The reason that you didn't go is because you had been looking at the donkey?

A. I don't even remember the day the funeral was.

Q. To refresh your recollection, it was the fifth day of May.

A. No. My check stub that I wrote the check out to pay for the donkey the day he delivered it was marked May 5, and this was before that.

Q. Mr. Bernathy was a good Union man, wasn't he? A. I think he was.

Q. He had been quite an active member of the Union for a long time?

A. Since I knew him he hadn't been too active.

Q. Did you work at Wilmac? A. No.

Q. Did you work at W. R. W?

A. W. R. W.

Q. Were you there late in '52 when they had the strike over the Union shop?

A. Yes, sir.

Q. You are a neighbor of Mr. Davisson, aren't you? A. Yes, sir. [50]

Q. And you had been a neighbor for a long time? A. Yes, sir.

Q. How far apart do you live?

A. About a mile.

Q. You live between Mr. Davisson and Mr. Cook, is that right? A. Yes, sir.

Q. During the time that this Union shop strike was on, you asked Mr. Davisson for a job, didn't you?

(Testimony of Delbert Ray Rawlins.)

A. Yes, sir. Very shortly after the strike went on I asked him if I could work up there.

Q. And you did get the job?

A. Yes. He called me up a few days later and asked me if I could come to work.

Q. And you were on strike at the time?

A. Yes, sir.

Q. And you had been taking part in the strike?

A. I was on the committee.

Q. You were on the Union committee?

A. That is correct.

Q. And you also had been doing some picketing? A. Yes, sir.

Q. Despite this Mr. Davisson hired you?

A. Yes, sir.

Q. How long have you known Mr. Davisson?

A. I don't know. About seven years I imagine.

Q. Mr. Davisson was a member of the I.W.A. before he started in business for himself, wasn't he? A. I don't know.

Q. Do you know if Mr. Scherrer was?

A. I don't know that either.

Q. Do you know whether all of the partners were? A. I couldn't tell you.

Q. You say that Mr. Davisson did offer to hire you? A. Yes, he did.

Q. That was in April of 1953?

A. Yes, it was the last, I believe the last day of April or right in there. At that time I refused the job I told him why. That I couldn't leave Alex alone—

(Testimony of Delbert Ray Rawlins.)

Mr. Maxwell: Just a moment. I asked for an answer to be answered yes or no. And I asked for a simple answer.

Trial Examiner Royster: You may answer that question or not, and then go on to explain your answer in effect.

The Witness: Would you please restate the question.

Mr. Maxwell: Would you please read it to him?

(Question read.)

A. Yes.

Q. (By Mr. Maxwell): You refused the job?

A. Yes.

Q. At that time he didn't state to you whether he would or wouldn't hire Cook, isn't that correct?

A. I don't think he stated that to me. I don't recall.

Q. You don't recall whether he said he would or would not hire Cook?

A. It seems to me, but I am not sure, I had better not answer that.

Q. As a matter of fact, at that time all of his old men hadn't been called back to work, isn't that correct?

A. I don't just get the meaning of your question. Up until the time that he offered me a job do you mean?

Q. When did he offer you this job again?

A. It would have been the last days of April or the first days of May.

Q. At that time he was still calling back to work

(Testimony of Delbert Ray Rawlins.)

individuals who worked for them in the Fall when they shut down because of weather?

A. I think they must have all been on the payroll at that time. Because I had no seniority and he would naturally have called them before he offered me a job.

Q. On the occasion when you stopped and drove in the driveway and talked to Mr. Davisson, Mr. Cook was following you in his car?

A. That is right.

Q. How long had you been there before Mr. Cook arrived?

A. I don't think it could have been over five minutes.

Q. You got out of your car and walked over to where Mr. [53] Davisson was working on the Crummie, didn't you?

A. I never got out of my car at all.

Q. As a matter of fact, at that time you did discuss this gas donkey that you and Mr. Cook were purchasing?

A. We may have talked about it.

Q. You told Mr. Davisson that you and Mr. Cook were going into logging?

A. I don't remember the exact conversation, but I think we talked about the donkey.

Q. At that time you and Mr. Cook had decided to go into logging, hadn't you?

A. We had decided to take out some timber until such time we could get a job and then we figured

(Testimony of Vernon B. Castle.)

Q. Does that pertain to the—does that also apply to negotiations of contracts? [57]

A. Yes.

Q. Do you participate in negotiating contract for your Local? A. Yes.

Q. Have you on occasion participated in the negotiations for contract with Scherrer Davisson Logging Company in your Union? A. Yes.

Q. Has your local Union ever been a party to any labor agreement with the Scherrer Davisson Logging Company? A. Yes.

Q. At the present time is it under contract with the company?

A. Yes. I might add there for the record, that while we haven't got the signed stipulations renewing this year's contract, we still have been operating under last year's contract.

Q. What was the first contract between your Union and the company since you have held the office that you now hold?

A. I believe it was in November 1952.

Q. In November 1952 you entered into your first contract with the company? A. Yes.

Q. Do you know Mr. William Davisson?

A. Yes.

Q. Do you know Mr. Alex Cook?

A. Yes.

Q. As business representative for your Union have you ever been contacted by any companies for the purpose of having your [58] Union furnish men for work? * * * * *

(Testimony of Vernon B. Castle.)

A. I am frequently contacted by various employers seeking men to place on positions.

Q. (By Mr. McIntyre): Have you ever had any conversation with Mr. Davisson relative to the employment of men? A. Yes.

Q. Did you ever have any conversation with Mr. Davisson relative to the employment of power saw men? A. Yes.

Q. Did you have any conversation with Mr. Davisson in 1953 relative to the employment of power saw men? A. Yes.

Q. Do you know what month that was?

A. I believe it was in the month of May.

Q. In the month of May of 1953?

A. I think it was either in the month of May or the very early part of June.

Q. Where did that conversation take place?

A. Granite Falls.

Q. Approximately what time of day was that?

A. Oh, approximately 5:30 in the afternoon.

Q. Placing it closer, you are the same Vern Castle that filed the charge in this proceeding?

A. Yes.

Q. Did the conversation with Mr. Davisson take place before the filing of the charge?

A. Yes.

Q. Did it take place before you had knowledge that a charge was to be filed? A. Yes.

Q. And the conversation took place in Granite Falls? A. Yes.

Q. Where in Granite Falls?

(Testimony of Vernon B. Castle.)

A. Corner Tavern.

Q. Did you meet Mr. Davisson in there?

A. Well, not by prearrangement, but I did meet him in there.

Q. Was he there before you got there?

A. I don't recall.

Q. But you did have conversation in there with him? A. Yes.

Q. Would you repeat what that conversation was.

A. He asked me if there were any power saw men available. He said that he needed one or two power saw men. I am not sure the number that he needed, but he was looking for some power saw men. [60]

Q. What did you tell him?

A. I told him there should be some around the other valley, meaning around the Sultan Valley. But I didn't know just offhand right at that time who there would be. * * * * *

Q. After that occasion did you have any other conversation with Mr. Davisson relative to the hiring of any power saw men? A. Yes.

* * * * * [61]

Q. (By Mr. McIntyre): When did you have the next conversation?

A. On, I would say around the tenth of June.

Q. Where did that conversation take place?

A. At Sultan.

Q. Sultan, Washington? A. Yes.

Q. Approximately what time of day was that?

(Testimony of Vernon B. Castle.)

A. About 4:30 or quarter till five in the afternoon.

Q. Just where in Sultan did it take place?

A. At Second and Main.

Q. Second and Main. Did you just meet him on the corner there?

A. It is the corner where the crew buses come into and stop at, and if there is any rearrangement of the crew to ride on to Granite Falls that is where it is done. And I believe they also have the power saws work on at the shop on that corner. I am not sure about that, but I think they do. It is their regular stopping place when they go to work in the morning and when they come back in at night.

Q. Just what was that conversation?

A. That when I asked him how come he didn't hire Alex Cook. What was the matter that he didn't hire Alex Cook. And informed him that if they didn't hire him that we would file unfair labor practice charges against the company.

Q. What did he say then?

A. Well, he didn't say very much. He said that Alex Cook was [62] a good man, he would like to have him. But then he made some statement to the effect that there wasn't room for him on the Crummie. He didn't want to hire any more from Granite Falls because there wasn't any more room on the Crummie, that is the crew truck.

Q. Did he say that that was the only reason, there wasn't any room on the Crummie?

(Testimony of Vernon B. Castle.)

A. He didn't say that there wasn't reason. He said that he was a good man and that he would like to have him. * * * * [63]

Q. Do you know where Mr. Alex Cook lives?

A. Yes.

Q. About how far from the company's operations does he live?

A. Oh, I would say approximately 50 miles where you have to drive with a car.

Q. About fifty miles?

A. Approximately that.

Q. Do you know other—do you know any other employees that were employed by Scherrer Davisson in May of 1953 who drive 50 miles from the operation? A. Yes.

Q. Are you able to recall them by name?

A. Well, there was a Tom Stalnaker.

* * * * [64]

Q. (By Mr. McIntyre): Do you know Frank Brush? A. Yes.

Q. Was he employed by the company in May of 1953? A. Yes.

Q. Do you know where he lives?

A. Granite Falls.

Q. Do you know Ralph—

Trial Examiner Royster: (Interrupting): What do you mean by the term "employed by the company"?

The Witness: New hire.

Trial Examiner Royster: What do you mean by

(Testimony of Vernon B. Castle.)

your question. We have gotten what the witness means by his answer.

Q. (By Mr. McIntyre): Was he working for the company?

A. Yes, he was working for the company during the month of May.

Q. Where did he work?

A. He was working out at their logging operation out of Sultan. * * * * *

Q. (By Mr. McIntyre): Do you know Ralph Dexter? [65] A. Yes.

Q. Was he employed by the company in May of 1953? A. Yes.

Q. Was he working on their logging operation at that time? A. Yes.

Q. Where does he live?

A. I believe he did live at Granite Falls, I am not sure. He might have lived in Everett I am not sure about that.

Q. Do you know Mr. Delwin Russel?

A. Yes.

Q. Do you know where he lives? A. Yes.

Q. Where does he live?

A. About two miles from Granite Falls.

Q. Was he employed by the company in May of 1953?

A. I believe it was May that he went to work for them. * * * * *

Q. (By Mr. McIntyre): Do you know Mr. Leonard Treen? A. Yes.

Q. Do you know where he lives? [66]

(Testimony of Vernon B. Castle.)

A. I don't know exactly where he lives. But he lives out towards Arlington between Granite Falls and Arlington, out in that area.

Q. About how far would that be from the company's operation?

A. Well, I suppose it would be 50 miles or more.

Q. Did he work at the company's operation in May of 1953?

A. I believe that is when he went to work too, yes. * * * * [67]

Cross-Examination

Q. (By Mr. Maxwell): Mr. Dexter worked—was an old employee and worked for them before, isn't that true?

A. I think he had worked for them before, but he had been gone for quite some time and was rehired.

Q. He had worked for the company prior to that time? A. Yes.

Q. Isn't that true of Mr. Brush?

A. Not that I know of.

Q. Do you know that Mr. Brush was not employed by them before?

A. I would say no, that he had never been employed by them before in the last five years.

Q. What about Mr. Anderson?

A. And I don't think he had, either.

Q. What about Mr. Russel?

A. I am not sure about Mr. Russel. But I do

(Testimony of Vernon B. Castle.)

know that Mr. Russel the previous year was working at another operation.

Q. Mr. Treen worked there a short time, isn't that correct? A. Yes.

Q. As a matter of fact, Anderson and Treen worked there only [68] a short time, both of them?

A. It wasn't too long a time.

Q. What was Mr. Brush's job?

A. I don't know.

Q. Rigging, wasn't it?

A. I don't know for sure.

Q. It wasn't cutter?

A. I don't know. I think he was working on the rigging, but I really don't know.

Mr. Maxwell: I believe that is all.

Redirect Examination

Q. (By Mr. McIntyre): Does your contract provide for a seniority clause? A. Yes.

Q. The one with the Scherrer Davisson company? A. Yes.

Q. Did the one that was negotiated in November 1952 provide for a seniority clause?

A. Yes.

Q. Did that seniority clause make any allowances for old employees of the company?

A. Yes.

Q. Employees who had not been employed at the company at the time the contract was executed?

A. No, it wouldn't provide for any seniority for anybody that [69] hadn't been an employee yet.

(Testimony of Vernon B. Castle.)

Q. Let me ask you this: Did you hear the testimony of Mr. Rawlins? A. Yes.

Q. He testified that he was employed by the company in 1950. A. Yes.

Q. Would that seniority clause make any provisions for his seniority? A. No.

Q. How far back would it go?

A. The reason it wouldn't apply to Mr. Rawlins was because he hadn't worked long enough to establish any seniority and then he went on another job. * * * * [70]

FRED ALLEN ROBERTS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. McIntyre): Mr. Roberts, would you state your full name for the record, please.

A. Fred Allen Roberts.

Q. Mr. Roberts, where do you live?

A. Startup, Washington.

Q. Mr. Roberts, did you ever work for Scherrer Davisson Logging Company? A. Yes, I did.

Q. What year did you work there?

A. 1953.

Q. When did you first go to work?

A. About June 1.

Q. What job were you working?

A. I was chaser on the cold deck.

(Testimony of Fred Allen Roberts.)

Q. Who hired you? A. Red Davisson.

Q. Is he one of the partners, did you understand? A. Yes, he is.

Q. Did you also know Oscar Scherrer?

A. Yes, I do.

Q. Is he also one of the partners?

A. Yes.

Q. Did you know Alex Cook?

A. Yes, I do.

Q. Did you ever have any conversation after having been employed by Scherrer Davisson with Mr. Oscar Scherrer relative to Mr. Cook's Union activity? A. Yes, I did.

Q. Can you recall about when that was?

A. It was around a week after I was hired.

Q. Where did that conversation take place?

A. It took place beside the donkey one afternoon while we were eating lunch.

Q. Was Mr. Scherrer eating lunch with you?

A. Yes, he was.

Q. You had some conversation with him?

A. Yes, I did.

Q. Would you repeat what that conversation was?

A. He said he wouldn't hire Alex Cook because he was too active in the Union and he was afraid if he hired Alex Cook that Alex would cause his men to go out on strike. And he heard [72] around the country that Alex Cook was the cause of all the strikes and that it had happened before.

Q. Did he say anything else in that conversa-

(Testimony of Fred Allen Roberts.)

tion relative to the Union activity of Alex Cook?

A. No, that was all.

Q. Did he ever have any other conversation with you relative to Alex Cook's Union activities?

A. Yes, we did. Once on the cold deck, but it was the same thing. He said the same things as he did before. He was talking about the same things.

Q. When was that?

A. About another week.

Q. About another week after the first conversation? A. Yes.

Q. About what time of the day, do you recall?

A. It was in the afternoon. He was helping me chase on the cold deck.

Q. Would you repeat again what that conversation was at the cold deck?

A. He said then again that he wouldn't hire Alex Cook because he was too active in the Union.

Q. Did you ever have any conversation with Mr. Davisson, either before or after you were employed by the company, relative to Alex Cook's Union activity?

A. Yes, I did. Once before and before Red hired me. I was [73] there one evening and he said that he would like to hire Alex Cook but he couldn't because his partners wouldn't let him.

Q. Where did that conversation take place?

A. That was at Red Davisson's house.

Q. About how long before you were employed?

A. That was about a week.

Q. Where are you employed now?

(Testimony of Fred Allen Roberts.)

A. Great Northern Railroad.

Q. How long did you continue in the employ of Scherrer Davisson?

A. About a month and a half.

Mr. McIntyre: No further questions.

Cross-Examination

Q. (By Mr. Maxwell): When did this first conversation take place, what date?

A. I don't know the exact date, about a week after I was hired.

Q. When were you hired? A. June 1.

Q. You were on the rigging?

A. Yes, sir.

Q. How old are you? A. Eighteen.

Q. How old were you then?

A. I was eighteen then. [74]

Q. Did you have a permit?

Mr. McIntyre: Objection.

Trial Examiner Royster: Sustained.

Q. (By Mr. Maxwell): Is it your testimony that Mr. Scherrer just voluntarily brought this subject up and made that statement?

A. Yes, he did.

Q. Just out of the clear sky?

A. Yes.

Q. And it is your testimony also that on the second occasion he just voluntarily brought it up and said that to you? A. Yes, he did.

Q. As a matter of fact, you are a brother-in-law of Mr. Cook? A. Yes, sir.

(Testimony of Fred Allen Roberts.)

Q. Mr. Cook has talked to you several times since? A. Yes, sir, once or twice.

Q. And he suggested these matters, did he not?

A. No, sir.

Q. When was the last time that he talked to you before testifying here?

A. He never talked to me before testifying here.

Q. How did the Board get your name?

Mr. McIntyre: Objection.

Trial Examiner Royster: I will overrule the objection. You may answer. If you know. [75]

A. They got it I guess through the Union hall or through the Government man who came up to talk to me.

Q. (By Mr. Maxwell): Were you a member of the Union? A. No, sir. Not at the time.

Q. Not at the time. How long did you work there? A. About a month and a half.

Q. You are not a member of that Union now?

A. Yes, sir.

Q. Do you continue to pay dues to them?

A. No, sir.

Q. Did you take a withdrawal?

A. No, sir.

Q. When was the last time you paid your dues?

A. About two months ago.

Q. As a matter of fact, this was the first job you ever had in the woods? A. No, sir.

Q. When did you work in the woods before?

A. I worked for the Monroe Logging Company about a month before.

(Testimony of Fred Allen Roberts.)

Q. That was in 1953? A. Yes.

Q. 1953 was the first year you have worked in the woods? A. Yes.

Q. When did this conversation take place at Red Davisson's [76] house?

A. About a week before I was hired.

Q. How did the subject come up then?

A. We got talking about my brother-in-law and I asked him if he came down and asked for a job, and he said yes he did. He said he was going to hire him and would like to hire him but he couldn't because his partners wouldn't let him.

Q. What month was that?

A. That was about May. The last of May.

Q. The last of May 1953? A. Yes.

Q. Who was present at the home?

A. No one, just me and Mr. Davisson.

Q. Where did the conversation take place?

A. At his home on the back porch.

Mr. Maxwell: That is all.

Trial Examiner Royster: Was anyone present in a position to hear on either of these occasions when Mr. Scherrer made the remarks to you that you testified before?

The Witness: No, sir.

Trial Examiner Royster: Anything else?

Mr. McIntyre: No.

Mr. Maxwell: No.

Trial Examiner Royster: That is all, Mr. Roberts. You are excused. * * * * * [77]

FLOYD L. DORNING

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Maxwell): Will you state your full name, Mr. Dorning?

A. Floyd L. Dorning.

Q. Where are you employed?

A. Scherrer and Davisson Logging Company.

Q. How long have you been employed by the Scherrer and Davisson Logging Company?

A. About five years.

Q. Are you a member of the Union, the International Woodworkers of America, Local 23-93?

A. I am.

Q. How long have you been a member of that Union?

A. Oh, off and on I have been a member since about 1940.

Q. Do you serve on any committees in the Union? A. I do.

Q. What committee are you on? [82]

A. I am shop steward.

Q. Is that an office?

A. It is on a job office.

Q. Shop steward at what operation?

A. Scherrer and Davisson.

Q. How long have you been shop steward?

A. About three years.

Q. Are employees in Scherrer and Davisson all members of the Union?

(Testimony of Floyd L. Dorning.)

A. Well, I couldn't say for sure, but I think they are a hundred per cent.

Q. And that has generally been true, has it not, over the past few years?

A. For the most part, yes.

Q. In your position as shop steward and as an employee of Scherrer and Davisson, have you ever found a case where they discriminated against an individual because of Union activity?

Mr. McIntyre: Objection.

Trial Examiner Royster: I will sustain the objection.

Mr. Maxwell: Just a minute. I would like to be heard on that.

Trial Examiner Royster: Go ahead.

Mr. Maxwell: We are charged here of discrimination because of Union activities. And here is a man who has served in the Union as a shop steward. He has been shop steward for [83] three years in the employ of this company, and I think I can bring up and show that during this whole period of time there has not been one case of discrimination.

Trial Examiner Royster: That would have to be assumed under the evidence. Under the evidence there is nothing to show any unfair labor practice except whatever the evidence may show in respect to Cook.

Q. (By Mr. Maxwell): Was the claim of Mr. Cook ever taken up with you?

A. Only as hearsay.

(Testimony of Floyd L. Dorning.)

Q. It never came to you through Union channels? A. Not that I know of.

* * * * [84]

(Witness excused.)

VICTOR B. HILL

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Maxwell): Will you state your name? A. Victor B. Hill.

Q. Where are you employed?

A. Scherrer and Davisson Logging Company.

Q. How long have you been employed there?

A. This is my second year.

Q. You were employed in what year?

A. '52.

Q. At the time you went to work for Scherrer and Davisson were you a member of the International Woodworkers of America Union?

A. No.

Q. Did you have any conversation with any members of the company partners regarding membership? A. Yes, I did. * * * * [85]

WILLIAM ROBE DAVISSON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [86]

Direct Examination

Q. (By Mr. Maxwell): Will you state your name, please?

A. William Robe Davisson.

Q. You are one of the partners of Scherrer and Davisson? A. Yes.

Q. You are the individual who is sometimes referred to as Red Davisson? A. Yes, sir.

Q. How long have you been engaged in the business of logging for yourself, or as a partnership, member of a partnership?

A. I think it was 1949 that we formed the partnership. Maybe '47 or '48.

Q. Did you work in the logging industry before that? A. For a short time, yes.

Q. Were you a member of the International Woodworkers of America? A. Yes, sir.

Q. Are you a member of any other Union?

A. American Federation of Labor, Teamsters Union.

Q. Were you a truck driver? A. Yes.

Q. Mr. Davisson, the firm of Scherrer and Davisson, are you charged with the responsibility of hiring men?

A. I hire men, subject to the approval of the partners.

(Testimony of William Robe Davisson.)

Q. You hire men for any part of the operation?

A. Yes.

Q. When did your operation shut down for the winter of 1952? A. In '52?

Q. Yes.

A. I think it was the first day of December.

Q. At that time did you have a Union contract with Local 23-93? A. Yes.

Q. When did you resume your operations? In 1953. A. May I look?

Q. To refresh your recollection you may examine your records. A. April 22nd.

Q. April 22, 1953? A. Yes.

Q. Under your Union agreement were you required to call back employees who had worked for you at the time of the shut-down?

A. Yes, sir.

Q. Did you call employees back?

A. I called them all.

Q. When you started operation, what part of the logging operation did you first start to work?

A. The cutting crew.

Q. Whom did you use on the cutting crew when you started in April? I mean, were they cutters?

A. Some of them were. Most of them were rigging men. Our [88] old rigging men.

Q. Employees who had been with you before?

A. Yes.

Q. Referring to March of 1953, were you contacted by Mr. Cook? A. Yes.

Q. Where? A. At my home.

(Testimony of William Robe Davisson.)

Q. At what time of day was that?

A. I imagine it was around five o'clock, I don't know for sure.

Q. What was said at that time?

A. Mr. Cook asked me if I would need any men in our cutting crew next season. I told him I would need quite a few men, but we were going to hire all of the cutting crew and all of the rigging crew that we could in the Sultan area to get away from transportation, hauling them.

Q. At that time did you promise Mr. Cook a job? A. No, sir.

Q. Did Mr. Cook make any statement as he left the house?

A. When Mr. Cook left the house he said, if you want me let me know. And I said O.K., and he went out.

Q. Did you follow him out? A. No.

Q. When was the next time that you saw or talked to Mr. Cook? A. On the fifth of May.

Q. How do you fix the date.

A. Because of the funeral that I had been to of one of our employees.

Q. At approximately what time was that? What time of day?

A. It was late afternoon. I don't remember the time.

Q. Would you relate what happened then on the fifth of May in the late afternoon?

A. I was working on the crew truck along side of the road. Mr. Rawlins drove up, stopped, and

(Testimony of William Robe Davisson.)

asked me about the funeral. He said that he couldn't go because he and Mr. Cook had been over in the Lake Rossinger area to see about buying a donkey or moving it home, or something, and then we went on talking about things. I don't remember just what.

Q. Did you get into Mr. Rawlins' car?

A. No.

Q. Where did you stand?

A. Along side of the car talking to him.

Q. On which side of the car?

A. It would be on the right side.

Q. Opposite of the driver's side?

A. Yes.

Q. Did Mr. Cook show up at that time?

A. He drove up probably five minutes after Mr. Rawlins and I had been talking.

Q. Was Mr. Cook in another car? [90]

A. Yes.

Q. Was anyone with him in the other car?

A. No.

Q. Where did Mr. Cook stop?

A. He stopped on the highway alongside of my driveway.

Q. Did Mr. Cook get out of the car?

A. No.

Q. Did you talk to Mr. Cook at all?

A. No.

Q. Did Mr. Cook talk to you? A. No.

Q. At that time did he ask you anything about employment? A. No.

(Testimony of William Robe Davisson.)

Q. Except for the time in March have you ever been contacted by Mr. Cook? A. No.

Q. Has the Union ever taken up with you the matter of your failure to hire Mr. Cook?

A. Yes.

Q. When?

A. I don't know dates, but once in Granite Mr. Castle accused me of unfair labor practice because I didn't hire Mr. Cook.

Q. Referring to Mr. Castle's conversation, do you recall in Granite having a talk with him then?

A. I talked with him, but not—— [91]

Q. (Interrupting): Do you recall on that occasion you said, you asked Mr. Castle about power saw men?

A. I don't remember whether I asked him that particular time. I have asked him a couple of times.

Q. Do you recall him stating to you there were power saw men available in the Sultan valley?

A. Yes.

Q. Referring to the meeting in Sultan, did you see Mr. Castle in Sultan? A. Yes.

Q. Did he ask you then why you had not hired Mr. Cook?

A. No. He just told me that he was going to show Alex Cook how to file charges against my company.

Q. Did you state to him at that time that you didn't want to hire more men from Granite Falls?

A. Yes.

Q. Did you ever state to Mr. Cook that your

(Testimony of William Robe Davisson.)

refusal to hire him was because of any alleged Union activities on his part? A. No, sir.

Q. Did you ever make a statement to Mr. Cook that a Mr. Mackie was trying to starve him out of the country? A. No, sir.

Q. Did Mr. Cook ever make that statement to you? A. No.

Q. Under your working agreement is any dispute or grievance [92] to be taken up by the Union with the company? A. Yes.

Q. Did this Union, through its committee or officers, ever bring to your company under the grievance procedure of the contract, a complaint as to your refusal or failure to hire Mr. Cook?

A. No.

Q. In March did Mr. Rawlins contact you about a job? March of 1953.

A. I think it was in April of 1953.

Q. That was the first time? A. Yes.

Q. At that time did you promise him a job?

A. I told him if he would quit the W.R.W., whom he was working for at that time, that I would give him a job.

Q. When were you to give him this job?

A. When we put the cutting crew to work after the rigging crew was through.

Q. What was your reason for telling him to quit W.R.W.?

A. They are holding their seniority there. If I hired him and then W.R.W. went back to work he would quit me and go to work back there again.

(Testimony of William Robe Davisson.)

Q. What did Mr. Rawlins say with reference to this offer of yours?

A. He told me if that is all it took he would quit. [93]

Q. Did Mr. Rawlins contact you at any time thereafter regarding a job?

A. Not until I went after him.

Q. About when was that?

A. I think the 10th of May.

Q. The 10th of May? A. Yes.

Q. Will you relate what happened then?

A. I went to get him to come to work and Mr. Rawlins told me that he and Mr. Cook were working for themselves taking out pulp wood, and that until Mr. Cook found employment someplace he couldn't leave him.

Q. At that time was any statement made with reference to Mr. Cook's Union activities?

A. No.

Q. Did you at any time make any statement to Mr. Rawlins with reference to Mr. Cook's Union activities? A. No.

Q. Were you present in the room when Mr. Castle testified? A. Just now?

Q. Yes. A. Yes.

Q. Was Mr. Frank Brush hired by your company? A. Yes.

Q. What was his job? [94]

A. What they call whistle punk.

Q. Is that on the cutting or the rigging crew?

A. Rigging crew.

(Testimony of William Robe Davisson.)

Q. Had Mr. Brush worked for you before?

A. No, sir.

Q. Where did Mr. Brush live?

A. In Granite Falls.

Q. What was the reason for hiring Mr. Brush who lived near Granite Falls?

A. Rigging men are hard to get, at any time. You have got to take them when you can get them.

Q. How about the cutting crew?

A. You can get them anyplace.

Q. Did you hear the testimony of Mr. Castle regarding your employment of Mr. Dexter?

A. Yes.

Q. Will you state the facts with reference to Mr. Dexter?

A. Mr. Dexter was on leave from our company, Army. He was in the Army. He held his seniority through the time he was in the Army.

Q. What about Mr. Stalnaker?

A. He was a new employee.

Q. When was he hired, approximately?

A. I think it was the 8th of May that he went to work.

Q. Was he on the rigging crew or cutting crew?

A. Cutting crew.

Q. Was there any understanding with Mr. Stalnaker about his commuting to work? A. Yes.

Q. Where did he live?

A. He lived in the Granite vicinity someplace. I don't know just exactly where.

(Testimony of William Robe Davisson.)

Q. What was the understanding with reference to the transportation.

A. That he drove to Sultan and we would haul him from there.

Q. What about a Mr. Earl Anderson?

A. He lived somewhere in the Sultan area. He came to Sultan, too.

Q. What about Mr. Russel?

A. He drove to Sultan.

Q. What about Mr. Treen?

A. The same with him.

Mr. Maxwell: Your witness.

Cross-Examination

Q. Did you ever tell Mr. Cook that you would hire him if he would furnish his own transportation? A. No, sir.

Q. Did you ever offer employment to Mr. Rawlins? A. Yes.

Q. When did you offer it? [96]

A. I think it was sometime in April. I don't remember just exactly when.

Q. What employment did you offer him?

A. Power saw work. Cutting crew.

Q. He lives by you, Mr. Cook, doesn't he?

A. Yes.

Q. Was there any discussion made as to what the arrangements would be for transportation for Mr. Rawlins?

A. Mr. Rawlins worked for us before, and I told him, I told Mr. Cook, too, that those old cutters

(Testimony of William Robe Davisson.)

we would haul. New men would have to furnish their own transportation.

Q. Did you hire any new employees after May 6 of 1953 who lived in Granite Falls?

A. Did I what?

Q. Did you hire any new employees after May 6, 1953, who lived in Granite Falls?

A. Yes, some of those men who we just spoke of, Granite Falls men. And new men.

Q. What about Mr. Wilder?

A. He had worked for us before.

Q. When did he work for you before?

A. May I question?

Q. Have you got your time book?

A. No, not that far back.

Q. I will withdraw the question. He worked for you in the [97] previous three years?

A. I think so, yes. I am not sure, I think so.

Q. Did he still have seniority?

A. I don't think so, no.

Q. Do you know Mr. Oscar Scherrer?

A. Yes.

Q. Do you know Mr. Mackie? A. Yes.

Q. Are they related? A. Yes.

Q. What is their relationship?

A. Mrs. Mackie is Mrs. Scherrer's mother.

Q. Mrs. Mackie is Mrs. Scherrer's mother?

A. Yes.

Q. Do the Mackies live over by the Scherrers, do you know?

(Testimony of William Robe Davisson.)

A. They live in Granite Falls, outside of Granite Falls.

Q. Who lives outside of Granite Falls?

A. Oscar Scherrer and Mrs. Scherrer.

Q. Where did the Mackies live?

A. In Granite Falls.

Q. How long had Mr. Dexter been out of the area when you hired him?

A. The time it took him to drive, you might say a leisure vacation, from New York to this coast.

Q. What did you consider leisure vacation? [98]

A. I don't know. He took his time coming from there. I don't know how long it was. I don't know when he was discharged.

Q. Wasn't it necessary for him to give you his discharge papers? A. No, it wasn't.

Q. Now, I believe when you were—during the early operation in March, you have a regular crew do you not, a rigging crew that is rather steadily employed? A. Yes.

Q. Do they do the cutting during the early part?

A. Not always. That depends on the timber that we have cut in the Fall, if any. This year we didn't have any.

Q. Didn't have any. Did they do the cutting?

A. They did part of it.

Q. Isn't it customary for the size of your operation to interchange employees to have them do something besides the strict classification job?

A. Yes.

(Testimony of William Robe Davisson.)

Q. So a cutter could do other jobs as well, and what are some of the other classifications?

A. Do you mean in rigging work?

Q. In regular logging operations.

A. Choker men, and loaders and riggers. Donkey puncher.

Q. When you need an employee, say as a cutter, do you look for an experienced logger or do you look strictly for a cutter? [99]

A. Nowadays we look for a cutter.

Q. You look for a cutter. If you can't find a cutter what do you do, do without?

A. I guess so.

Mr. McIntyre: No further questions.

Redirect Examination

Q. (By Mr. Maxwell): Was your failure to hire Mr. Cook because of any of his Union activities, present or past?

Mr. McIntyre: Objection.

Trial Examiner Royster: Overruled.

Q. (By Mr. Maxwell): Was your refusal to hire Mr. Cook because of his Union activities, present or past? A. No.

Recross Examination

Q. (By Mr. McIntyre): What was your reason for refusing to hire Mr. Cook?

A. Relationship between the heads of two or three companies, logging companies, in Granite Falls.

(Testimony of William Robe Davisson.)

Mr. McIntyre: Would you read that answer back?

(Answer read.)

Q. (By Mr. McIntyre): Would you tell me what that relationship is?

A. I just explained to you. That Mrs. Oscar Scherrer is a daughter of Mrs. Mackie. Ray and Ross Willard, heads of W.R.W. Logging Company, are sons of Mrs. Mackie. [100]

Q. Did Mr. Mackie prevail upon Mr. Scherrer not to hire Mr. Cook?

A. No. We had more or less agreements—agreement over a period of time around Granite Falls between what was Soundview Paper then, that is Stockview paper now, W.R.W., Wilmac Logging Company and ourselves that we wouldn't steal each other's men.

Q. You knew Mr. Cook was out of work, didn't you?

A. Mr. Cook was, and still is, holding his seniority with Wilmac Logging Company.

Q. Why didn't you tell Mr. Cook that that was the reason why you didn't hire him?

A. I didn't tell him. I told Mr. Rawlins.

Q. You didn't ever tell Mr. Cook though, did you? A. No.

Q. And you know that that family relationship is a fact? A. Yes.

Q. You know of the interchange—and is that the same Mackie who is the owner of the Wilmac?

A. Wilmac Logging. * * * * * [101]

MARGUERITE MARIE DAVISSON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Maxwell): Will you state your full name for the record?

A. Marguerite Marie Davisson.

Q. You are the wife of Mr. William Davisson?

A. Yes. * * * * [108]

Q. Referring to the next meeting, and more particularly May 5, did Mr. Rawlins stop at your house on May 5?

A. He stopped out by the highway.

Q. Where were you?

A. I was in the front room.

Q. Did Mr. Red Davisson get in Mr. Rawlins' car? A. No.

Q. Did you see Mr. Cook arrive?

A. Yes.

Q. Approximately how long after Rawlins arrived did Mr. Cook arrive?

A. Oh, I would say it was about five minutes.

Q. Where did Mr. Cook stop his car?

A. He stopped his car on the highway.

Q. Did Mr. Cook get out of his car?

A. No. * * * * [109]

[Endorsed]: No. 14,463. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Phillip Davisson, William Davisson, Oscar Scherrer and Warner Scherrer, d/b/a Scherrer and Davisson Logging Company, Respondents. Transcript of Record. On Petition to Enforce an Order of the National Labor Relations Board.

Filed: September 3, 1954.

/s/ PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14463

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

PHILLIP DAVISSON, WILLIAM DAVISSON,
OSCAR SCHERRER, and WARNER SCHERRER,
d/b/a SCHERRER AND DAVISSON
LOGGING COMPANY, Respondents.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant
to the National Labor Relations Act, as amended
(61 Stat. 136, 29 U.S.C., Supp. V, Secs. 141, et
seq.), hereinafter called the Act, respectfully peti-
tions this Court for the enforcement of its order
against Respondents, Phillip Davisson, William
Davisson, Oscar Scherrer, and Warner Scherrer,
d/b/a Scherrer and Davisson Logging Company,
in Granite Falls, Washington, their agents, suc-
cessors, and assigns. The proceeding resulting in said
order is known upon the records of the Board as
“Phillip Davisson, William Davisson, Oscar Scher-
rer and Warner Scherrer, d/b/a Scherrer and Dav-

isson Logging Company and International Woodworkers of America, Local 29-93, Case No. 19-CA-834."

In support of this petition the Board respectfully shows:

(1) Respondents constitute a partnership engaged in business in the State of Washington, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on April 22, 1954, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondents, their agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending a copy thereof post-paid, bearing Government frank, by registered mail, to Respondents' Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and

of the questions determined therein and make and entered upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board and requiring Respondents, their agents, successors, and assigns, to comply therewith.

Dated at Washington, D.C. this 29th day of July, 1954.

**NATIONAL LABOR RELATIONS
BOARD**

/s/ By A. NORMAN SOMERS,
Assistant General Counsel.

[Endorsed]: Filed Aug. 2, 1954. Paul P. O'Brien,
Clerk.

[Title of U.S. Court of Appeals and Cause.]

**ANSWER TO PETITION FOR ENFORCE-
MENT OF ORDER OF NATIONAL LABOR
RELATIONS BOARD**

Come now the respondents above named, by and through their attorneys, Patterson, Maxwell & Jones, and for answer to the petition filed by the National Labor Relations Board seeking enforcement of an order issued by said Board, answer as follows:

I.

Respondents admit that they are a partnership engaged in business in the State of Washington

within the judicial circuit wherein the alleged unfair labor practice is charged to have occurred and that the Court has jurisdiction to hear the petition of the Board by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

II.

Respondents admit that on or about April 22, 1954, after hearing before the National Labor Relations Board in the above entitled matter, said Board duly stated its findings of fact and conclusions of law and issued an order directed to respondents, their agents, successors and assigns. That on or about the same date the Board's decision and order was served on respondents and respondents' counsel.

III.

Respondents admit that the Board's proceedings before the above entitled court is pursuant to Section 10 (e) of the National Labor Relations Act, as amended.

IV.

Respondents deny that the Board's order should be enforced for the following reasons:

(1) The findings of fact and conclusions of law are not supported by a preponderance of the evidence.

(2) The Trial Examiner and the Board failed to give consideration or any weight to undisputed facts and rested their findings upon fragments of testimony in the record, all of which was contrary to the weight of substantial evidence.

(3) Based its findings and conclusions that the failure of the company to hire Mr. Cook discouraged membership in the Union when there is no evidence to support said finding.

(4) Made a finding that the failure of the company to hire Mr. Cook did in fact interfere with, restrain and coerce members in the exercise of the rights guaranteed by Section 7 of the National Labor Relations Act, as amended, when as a matter of fact there is no evidence in the record to support such finding.

(5) By its order directed the Company to offer employment to Mr. Cook in the spring of 1954, with the rights that he would have had had he been hired in March, April or May of 1953, without regard to the contract or working agreement between the Company and the Union, which said order would compel the Company to violate the seniority provisions of said agreement and would prejudice the rights of other employees.

(6) Overruling objections timely made at the hearing by refusing to strike the testimony of Delbert Rawlins appearing on page 41 of the transcript at line 11 and extending through line 2 on page 45.

(7) Sustaining the Trial Examiner's ruling denying to respondent the right to go into and show the relationship which existed between the Union and the Company, all of which was relevant and material to the basic issues and was further evidence which should have been admitted to rebut the testi-

mony offered by the general counsel and permitted by the Trial Examiner to go into the record.

V.

Respondents herein object to the hearing of the Board's petition for enforcement upon the ground and for the reason that the Board entered an order requiring respondents to offer employment to Alex Cook and to reimburse Alex Cook for loss of earnings. That at the hearing on the unfair practice charge the Board offered and received no evidence as to loss of earnings and did not pass upon the issue. That it was shown by the record that from the time it was charged respondent denied employment to Alex Cook, Alex Cook was self-employed and engaged in business with himself and another as co-partners. That the record therefore presented the issue as to whether or not and to what extent the gross or net income of Alex Cook or the partnership of which he was a member should be taken into consideration in determining the amount, if any, of loss of earnings respondent should reimburse Mr. Cook. That the issue was squarely presented but not passed upon by the Board. That it involves a basic issue of law. That before an order of enforcement is sought the Board should be required and directed to determine the amount of back pay, if any. That unless this question is passed upon it will be necessary to again present the issue to the above entitled court for its determination. That the application of the Board is prematurely

made in that the Board has not yet passed upon all the issues presented by the case.

Wherefore, having answered the petition of the National Labor Relations Board, respondents pray this Honorable Court that it enter an order reversing and setting aside the order issued by the National Labor Relations Board herein and refusing to issue out of the above entitled court an order enforcing the whole or any part of the order issued by said Board. That before accepting and entertaining the petition of the National Labor Relations Board for an order of enforcement herein, the Court direct the Board to hold a hearing and determine the amount of loss of earnings which the Board contends respondents must pay to Alex Cook and specifically how Alex Cook's earnings should be computed in the light of the fact that during a substantial portion of the time Alex Cook is reputed to have suffered a loss he was engaged in business for himself or as a partner or joint adventurer with another or others.

PHILLIP DAVISSON, WILLIAM
DAVISSON, OSCAR SCHERRER
and WARNER SCHERRER, d/b/a
SCHERRER AND DAVISSON
LOGGING COMPANY,

Respondents,

/s/ By R. W. MAXWELL

of Patterson, Maxwell & Jones,
Their Attorneys.

[Endorsed]: Filed Aug. 16, 1954. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE
RELIED ON

In this proceeding, the petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board properly found that respondent Company violated Section 8 (a) (1) and 8 (a) (3) of the Act by discriminatorily denying employment to Alex Cook.
2. The Board's rulings and procedure were valid and proper.

Dated at Washington, D. C., this 1st day of September, 1954.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National
Labor Relations Board.

[Endorsed]: Filed Sept. 3, 1954. Paul P. O'Brien,
Clerk.

